



MINUTES

State-Tribal Relations

Dakota Sioux Casino, Watertown, SD

Third Meeting
2010 Interim
September 23 and 24, 2010

Sisseton Wahpeton Oyate Tribal Headquarters,
Agency Village, SD

Thursday, September 23, 2010

The third meeting of the Legislature's State-Tribal Relations Committee for 2010 began at 8:30 am (CDT) at the Dakota Sioux Casino north of Watertown, one of three casinos operated by the Sisseton-Wahpeton Oyate. **Senator Jim Bradford**, Chair, called the meeting to order.

A quorum was determined with the following members answering the roll call: Senators Jim Bradford, Dan Ahlers, Ryan Maher, Russell Olson, and Craig Tieszen and Representatives Kent Juhnke, Kevin Killer, and Carol Pitts.

Staff member present was Tom Magedanz, Principal Research Analyst, Legislative Research Council.

(NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council (LRC).

Approval of Minutes

REPRESENTATIVE KENT JUHNKE MOVED, SECONDED BY SENATOR RYAN MAHER, THAT THE MINUTES OF THE JUNE 17, 2010, MEETING OF THE STATE-TRIBAL RELATIONS COMMITTEE BE APPROVED. The motion prevailed on a voice vote.

Gaming Issues

Mr. John Rondell, General Manager of the Dakota Sioux Casino, gave the committee a briefing on gaming operations for the tribe and for the Dakota Sioux Casino. He stated that the casino began in 1985 as a bingo hall, later transitioning to a casino and also a short tour of the casino. The current casino building was built in 2006 and includes a hotel facility. The casino received a loan from the Shakopee Tribe in Minnesota, which has been repaid, and the casino also makes payments to the Sisseton-Wahpeton tribe. The casino has 200 Class 3 machines, 100 Class 2 machines, 10 blackjack games, and 6 poker tables. The tribe's goals for the casino are to create more jobs for tribal members and other employees in the area, provide tribal revenue, to promote tourism in the area, and to provide for longer stays by customers in the area. The casino, which is located 8 miles north of Watertown, works with the city of Watertown and is involved with events in Watertown, including making financial contributions and donations to those events. He stated that both tribal members and nontribal members are employed at the casino and that payroll equals 35% of the casino's revenue.

Senator Russell Olson asked about the numbers of Class 3 machines at the casino and whether the current number is sufficient. Mr. Rondell stated that the tribe's 250 class 3 machines allowed under the gaming compact with South Dakota are divided between the Dakota Sioux Casino and the Dakota Connection Casino in Sisseton, with the majority of these machines at Dakota Sioux. The tribe also operates Dakota Magic Casino in North Dakota, which is not subject to a limit on machine numbers. He noted that a market study done a few years ago showed that Dakota Sioux Casino could benefit from more machines. He also said that even with no limit on machine numbers, the casino would not be acquiring more machines than the traffic would bear, because the machines are very expensive.

Senator Ryan Maher asked about the difference between Class 3 and Class 2 machines. Mr. Rondell said that Class 2 machines are a type of progressive bingo game and have a small bingo card on the front of the machine. Class 2 machines are not limited by the compact, but they are played much less than Class 3 machines, which are actual slot machines and are limited by the compact. Senator Bradford asked whether there is employment preference at the casino for tribal members and whether the casino makes any per capita payments to tribal members. Mr. Rondell replied that there is employment preference for tribal members but no per capita payments, although the casino does make payments to the tribe and its districts.

Senator Craig Tieszen asked where the majority of Dakota Sioux Casino customers come from and whether there is a different amount of business in different seasons of the year. Mr. Rondell said that most of their customers are from Watertown, Aberdeen, and western Minnesota, while tribal members tend to go to Dakota Connection near Sisseton and Dakota Magic across the North Dakota line. He said that summer and fall are busier than the winter months.

Tribal Headquarters, Agency Village

At 10:00 am the committee travelled to Agency Village to continue the meeting at the Sisseton-Wahpeton Oyate Tribal Headquarters. Senator Bradford welcomed everyone to the meeting and thanked the Sisseton-Wahpeton Oyate Tribe for hosting this meeting. An opening prayer was offered. **Tribal Chairman Michael Selvage**, Sisseton-Wahpeton Oyate, welcomed the committee and gave a presentation on current status of the tribe (**Document #1**). Chairman Selvage also introduced members of the Tribal Council and other officials present, while State-Tribal Relations Committee members were also introduced.

Mr. Delray German, Director of the Tribal Employment Rights Office (TERO), briefed the committee on the Tribe's activities in conducting the 2010 Census with federal authorities and efforts to ensure a complete participation by tribal members. He also presented awards to census workers and coordinators for their efforts.

Chairman Selvage then asked Tribal Council members to bring up for discussion issues on which they have concerns. One member expressed concern relative to Child Placement that the kinship and relative placement code (08008) is no longer being used and would like it to be reinstated so that children are placed in accordance with the Indian Child Welfare Act (ICWA).

Another member stated that it is important that funding intended for education purposes be spent for that purpose. She feels that there is abuse in the system at the current time and that some funds are diverted for other purposes. Education of our children must be our top priority.

On the question of putting land back into trust, one member noted that the State, at great expense, fights efforts to put land back into trust. He stated that he is a taxpayer too and that the Tribe should be able to get some properties back into trust status.

In the area of law enforcement, one member brought up the need for cross deputization between Tribal, State, and local law enforcement agencies and personnel. Officers can detain offenders from other jurisdictions, but have no authority to arrest, which often results in offenders being released when they are transferred to the other jurisdiction.

Tax Agreement Issues

Ms. Brenda Bellinger, Tax director, Sisseton-Wahpeton Oyate, discussed the tax agreement between the State and the Tribe. The State and the Tribe are currently involved in negotiations on the tax agreement, and operations continue under extensions to the existing agreement. One issue has to do with the amount of the tax split with the State. Senator Maher, noting that the tax split between the Tribe and the State for Sisseton-Wahpeton is 50/50, said that the Cheyenne River Sioux Tribe receives a higher percentage under its tax agreement and that the percentage is the same for gasoline, food, and tobacco. The issue of whether taxes paid by a tribal member on tribal land should all go to the tribe or be split between the State and the Tribe was discussed. Senator Bradford stated that the rate is an estimate based on population and spending patterns. Chairman Selvage stated that the court allows the State to collect 100% percent of taxes paid by non-Indians, but the split under the agreement is 50/50. Another suggestion was that the tax should be collected where the sale takes place rather than negotiate a collection agreement.

Another issue concerns a questionnaire used by the Division of Motor Vehicles to determine whether a person is entitled to a tax exemption by virtue of being a tribal member and residing on tribal land. The survey is very detailed and requests a large amount of personal information to determine where the person actually resides. Several Tribal Council members suggested that there are less invasive ways of determining a person's residence and that the survey goes too far in violating personal privacy.

Additional Gaming Discussion

Chairman Selvage discussed gaming issues and stated that the Tribe's Dakota Magic Casino, which is located across the North Dakota border on Interstate 29, is not subject to limits on machine numbers under North Dakota law and operates on a market-driven basis. The Tribe's two South Dakota Casinos, however, are subject to South Dakota's limits on number of machines, which hinders business for their South Dakota operations. He stated that the Tribe used its own money to build the casinos, but their presence helps the entire region economically. Senator Maher asked whether gaming compact negotiations should be subject to legislative approval. Chairman Selvage stated that it probably does not matter, but Senator Bradford noted that no tribe has supported adding the Legislature to the process.

TERO Agreement Issues

Mr. Delray German, Director of the Tribal Employment Rights Office, discussed TERO agreement issues. Federal law allows tribes to adopt tribal employment rights ordinances so that businesses and contractors doing business on tribal land must give preference in hiring to Native Americans and that such employers adopt a compliance plan to demonstrate how they will comply with TERO. Also, many tribes charge a fee to the contractor or business that is operating in tribal areas. The South Dakota Department of Transportation has a five-year contract with the Sisseton-Wahpeton Oyate for road projects and stimulus projects in the area and currently pays a fee of 3% the cost of certain portions of projects in the area. The Tribe and DOT are currently negotiating renewal of the agreement, with the State requesting that the fee be 2% of total project costs. Negotiations are ongoing.

Law Enforcement – Meth Prevention

Ms. Crystal Owen, Meth Prevention Coordinator, briefed the committee on the Sisseton-Wahpeton Oyate's efforts to reduce methamphetamine use. Her office works with drug users and with inmates, as well as dealing with schools and other community groups. Another activity that they are involved with to combat meth and other drug use is the use of Talking Circles. Ms. Owen distributed **Document #2**, "No Meth – Not Even One" and **Document #3**, a CD entitled "Reclaim Our Families." Ms. Owen also discussed grant funding that has been obtained and how it is being used. Senator Bradford asked about suicide rates in the area, and Ms. Owen replied that suicide rates are not as high as in some other areas, but suicide is still a problem here and is often related to drug use.

Environmental Issues

Ms. Myrna German-Thompson, SWO Office of Environmental Protection, discussed environmental issues involving the Tribe. Her office was established in 1994 through the US Environmental Protection Agency and an Indian Environmental Assistance Grant. One problem that she mentioned is the difficulty of monitoring violations on private land that affect tribal lands and waters. The fact that the Sisseton-Wahpeton Oyate is spread over a "checkerboard" area of noncontiguous tribal land and nontribal land makes it difficult to monitor and regulate environmental conditions.

Ms. German-Thompson also discussed a large dairy operation near Veblen, a concentrated animal feeding operation (CAFO) that has been discharging pollutants into the Little Minnesota River and has been in violation of standards on several occasions. Neither EPA nor the State has been able to address the problem, and she would like to see a process that would provide for consultation with the Tribe by the State before projects are approved. Another issue involves sewage discharges into Lake Enemy Swim from cabins by the lake. Formation of a sanitary district would be one avenue to address this problem. There are also problems with lead-based paint and with water rights issues. A formal structure for working with the State is needed.

Senator Bradford stated that the South Dakota Department of Environment and Natural Resources tends to stay away from the tribes because of jurisdiction issues and that problems

are worse in checkerboard areas where jurisdiction and responsibility are sometimes unclear. He said that the State and the Tribes need to work more closely with each other in these types of areas.

Historic Preservation

Ms. Diane Desrosiers, Tribal Historic Preservation Office (THPO), stated that the office was created as a result of the National Historic Preservation Act. In historic preservation issues, as in other areas, checkerboard boundaries and jurisdiction questions lead to additional problems. The office receives federal appropriations, but these sometimes decrease because new THPO's are created around the nation, which means that the federal funding amount doesn't go as far. State historic preservation offices get more funding than tribal offices do. Much of the office's activity involves Native burial sites and artifacts, which are sometimes found on private land and which are often taken illegally by artifact hunters. Many road and building construction projects impact sensitive historical sites, and they are working with SD DOT for an agreement on dealing with these, although Ms. Desrosiers noted that the State is sometimes reluctant to meet with the Tribe. She stated that the THPO must comment on any project funded with federal money. She also said that it would be helpful if the State would consult with the Tribe on historic preservation matters and asked whether there had been any previous state legislation or policy on consultation with the tribes.

Representative Kent Juhnke asked whether the office is aware of the locations of some of these sites and whether this information could be made public or provided to state agencies. Ms. Desrosiers said that this is sensitive information that cannot be made public because artifact hunters frequently take items illegally. Some of the sites are located on private land, and the Tribe does not have access to these areas. The Tribe does not know where some of the sites are. Representative Pitts asked whether people are prosecuted for disturbing those sites. Ms. Desrosiers said that there are Tribal ordinances, but the Tribe has no authority except on trust land, although there is a State law that prohibits destroying burial sites. Senator Olson asked what the THPO does when they learn of a project. Ms. Desrosiers stated that it depends on the situation and the likelihood that cultural resources are present. They handle most projects in 30 days, and they comment on approximately 1,000 projects per year.

Education

Mr. Ted Hamilton, Superintendent, Tiospa Zina Tribal School, described operations and activities at Tiospa Zina, a K-12 school with 532 students and 83 in the alternative learning center. He said that Tiospa Zina is accredited at both the regional level and the state level, and the school collaborates with the State and with other local schools for regional training and other activities. He said that the Indian Education Office in the SD Department of Education is helpful because it serves as a point of contact with the State. State requirements often affect tribal schools, but the tribes have little voice in this process. He would be in favor of more tribal input on state certification and accreditation matters, and he is also interested in the implementation of the 2007 Indian Education Act by the State legislature. The 2007 law established the Indian Education Office and also required that teachers receive training in Native American history and culture and that curriculum and content standards be developed for the teaching of Native American history and culture. He hopes that the Legislature and the Education committee will look at the current status of these issues.

Mr. Darrel DeCoteau, Enemy Swim Day School, discussed programs and activities at Enemy Swim Day School and noted that the school has met AYP requirements under the federal No Child Left Behind Act every year. The school has 161 students.

Representative Pitts asked whether there had been any changes in South Dakota education standards and AYP in the last year. Mr. DeCoteau said that a commission on school standards has not met recently and he does not know of recent changes. Committee members would like more information on the status of standards related to Native American issues as provided for in the 2007 State Indian Education Act.

A member of the Tribal Council stated that his son, an Afghanistan veteran, was not able to use certain State education benefits for National Guard members because he attends a tribal college. Committee members will check into this situation.

There was also discussion about nontribal students being educated at tribal colleges. These students pay less tuition than at state-supported or private colleges, and they are provided a service by being able to take courses near their home community. The issue of the State providing some reimbursement to the Tribe for providing this service to the community was discussed. This is done in Montana, and legislation to do this in South Dakota was introduced on a couple of occasions in recent years but did not pass.

Child Protection Issues

Mr. Ken Hardy, Sisseton-Wahpeton Child Protection Program, stated that the Sisseton-Wahpeton Oyate has contracted with the State since 1978 to operate its own child protection program and also licenses foster parents. He discussed “kinship care” which involves attempting to place children with relatives, although the relatives must be licensed to provide foster care. He also discussed funding issues and said that funding is always a problem. In response to a question by Senator Tieszen, he said that his office has 10 employees and deals with 72 children at the present time.

Tribal Realty

Mr. Floyd DeCoteau, Tribal Realty, informed the committee that the Sisseton-Wahpeton Oyate owns 47,000 acres of land, 24,000 by the Tribe, and 23,000 through the Bureau of Indian Affairs. He said that more land is needed for facilities and infrastructure, such as housing and water and sewer systems. The Tribe also leases out land and follows BIA standards in the leasing process. Senator Maher asked if there is preference for tribal members in leasing the land. Mr. DeCoteau answered that there is preference for tribal members but nonmembers also lease land. Chairman Selvage said that under the original 1867 treaty, the Tribe was to have approximately 1 million acres, but this was reduced and the Tribe now controls 109,000 acres, including trust land. He also said that the Tribe paid off three land loans from the 1970s, and he stated that the Tribe is the largest single economic influence in the region.

Adjournment

REPRESENTATIVE JUHNKE MOVED, SECONDED BY SENATOR MAHER, THAT THE MEETING BE ADJOURNED. The motion prevailed on a voice vote.

The meeting was adjourned at 5:00 pm.

Friday, September 24, 2010

Tours of Facilities in the Sisseton - Agency Village Area

On Friday, September 24, committee members toured facilities in the Sisseton – Agency village area. These included the Dakota Connection Casino and Convenience Store at Sisseton, the Woodrow Wilson Keeble Memorial Health center in Sisseton, and the Dakota Western Manufacturing Plant, the Tribal Law Enforcement Center, the Elderly Center, Sisseton-Wahpeton College, and Tiospa Zina Tribal School, all in Agency Village.



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